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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

David Allen Harbour,

Defendant.

Case No. 2:19-cr-00898-DLR (DMF)

**DEFENDANT'S SUPPLEMENT IN
SUPPORT OF ITS RESPONSE (Doc.
579) TO THE GOVERNMENT'S
MOTION TO STRIKE (Doc. 575)**

Defendant David A. Harbour ("Harbour"), by and through undersigned counsel,
submits this supplement in support of its response to the government's motion to strike.

BACKGROUND

The government's motion to strike (Doc. 575) seeks to preclude the Defense from
using exhibits the government has deemed to be untimely disclosed. This supplement
deals with timelines that have recently come to light in support of the Defendants'
position.

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ADDITIONAL FACTS

On November 29, 2022, the government provided its preliminary exhibit list containing 390 exhibits. One of those exhibits was Exhibit 74, Documents Provided by Mark Burg, and contained a Bates range of 002513-003099. On January 25, 2023, the government provided an updated preliminary exhibit list, this time containing 706 exhibits, and still containing Exhibit 74. Then, on January 31, 2023, the governments final exhibit list was filed with 858 exhibits and no longer contained some exhibits that were on the preliminary list, including Exhibit 74 which contained roughly 500 pages of Mark Burg related documents. Some of the documents the government is currently moving to strike are documents that were contained in their Exhibit 74. This is also true for the government's removed exhibits 373 and 374, which were tax records and emails from Dean Avedon.

The government has objected to everything disclosed after January 26, 2023. The vast majority of these documents relate to Green Circle, and many of them are documents that we believe were contained in the removed government exhibits, all of which had government production numbers. For example, a quick count revealed 72 with government production numbers. The government has identified "at least 272 files" on the proposed stipulation list they deem a late disclosure. The governments motion did not contain an exact starting point for which exhibits they were objecting to, rather, just everything after the January 26th date. The Defense would be happy to supply the Court with the exact number of such exhibits should the Court request it.

1 Since the final exhibit list date, the government has continuously and repeatedly
2 updated their disclosures and exhibit list. As of Friday February 10, the government
3 exhibit list now contains 902 exhibits (an additional 44 exhibits from the filing deadline
4 on January 31, 2023). The Defendant has also received the following disclosures from the
5 government: Disclosure 39 on January 31, 2023; Disclosure 40 on February 1, 2023;
6 Disclosure 41 on February 6, 2023; Disclosure 42 on February 8, 2023; and Disclosure
7 Disclosure 43 on February 9, 2023. Of course, with the trials being trifurcated, it is only natural that
8 we would receive additional disclosures for the other trials, but the disclosures received
9 from the government have included numerous documents that are being received by the
10 Defense for the first time and being used in the current trial one. For example, Exhibit
11 883, which has been entered into evidence and seen by the jury, was not disclosed to the
12 Defense until February 8, 2023 in government disclosure 42.

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16 We appreciate the opportunity to supplement the Response.

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19 RESPECTFULLY SUBMITTED this 12th day of February 2023.

20 CHRISTIAN DICHTER & SLUGA, P.C.

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22 By: /s/ Stephen M. Dichter

23 Stephen M. Dichter

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing and for transmittal of Notice of Electronic Filing to the following CM/ECF registrants:

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